



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

PETITION (Under Mental Health Act) NO 15 OF 2020

IN THE MATTER OF NN alias JNN (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

IN THE MATTER OF APPLICATION BY JWN AND MWK TO BE APPOINTED AS

GUARDIANS OVER THE AFFAIRS OF THE ESTATE OF NN alias JNN

JWN..... 1ST PETITIONER

AND

MWK.....2ND PETITIONER

JUDGMENT

1. The Petition before the court was brought by **JWN** and **MWK** being the wife and daughter, respectively of **NN alias JNN**. **JNN** (hereafter the subject) is 69 years old and resides at [Particulars withheld] Location, Kiambu County with his wife, the 1st Petitioner and some of his children who include **MWK** the 2nd Petitioner, and **JNN** (a son) and the daughters **LNW**, **MWN**. and **MWK** alias **MWN** erroneously referred to in her affidavit to support the Petition, as the 2nd Petitioner. The second Petitioner is **MWK** as named in the Petition itself. All the children of the subject have given consent to this Petition, which is necessitated by the diagnosis of senile dementia in respect of the subject.

2. The subject was examined by Dr. Omondi, a Consultant Psychologist on 22.07.2020 and pursuant to orders of this court, by Dr. Olando, a Consultant Psychologist at Mathare National Teaching and Referral Hospital on 21st September 2020. Both consultants agree on the diagnosis of dementia. According to the supporting affidavit sworn by the 1st Petitioner, the subject is unable to manage his affairs or care for himself due to this condition and requires constant nursing care from the family. More specifically the subject had filed a suit regarding his immovable property, namely **Nairobi ELC No. 27 of 2015** against **David Kariuki Nguthi and 2 Others** but is currently incapable of pleading due to his incapacity.

3. The court has considered all the material placed before it. The Petitioners invoke the provisions of Section 26 and 28 of the Mental Health Act. Section 26 of the said Act states that:

“1) The court may make orders—

(a) for the management of the estate of any person suffering from mental disorder; and

(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.

(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder

4. The definition in Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”

5. Based on the medical reports and affidavits on record, it is apparent that the subject suffers from a mental disorder and that the disorder has occasioned the diminution of the subject’s mental capacity and adversely affected his cognition and therefore ability to take care of his affairs or of himself.

6. In the circumstances, the court makes a finding that the subject is a person suffering from a mental disorder within the definition of the Mental Health Act and hereby appoints the Petitioners jointly as the subject’s guardians. Additionally, the court does appoint the said Petitioners as general managers of the estate of the subject. For the avoidance of doubt, such managers’ general powers will **not** include the power of alienation, sale or transfer of the subject’s **immovable assets** but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of his estate.

SIGNED AND DELIVERED VIRTUALLY ON THIS 23RD DAY OF OCTOBER 2020.

C. MEOLI

JUDGE